

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 JASON KYNYLL OWENS,

Case No.: 2:19-cv-02176-APG-DJA

4 Petitioner,

**ORDER DENYING
MOTION TO DISMISS**

5 v.

[ECF No. 10]

6 WARDEN WILLIAMS, *et al.*,

7 Respondents.

8
9 The respondents have filed a motion to dismiss. I will deny that motion without
10 prejudice to the respondents making the same arguments in their answer.

11 Jason Kynyll Owens was convicted in Nevada state court of attempted murder with the
12 use of a deadly weapon; battery with the use of a deadly weapon; discharging a firearm at or into
13 a structure, vehicle, aircraft or watercraft; and carrying a concealed firearm or other deadly
14 weapon. *See* Judgment of Conviction, Exh. 46 (ECF No. 12-6). Owens was sentenced as
15 follows: on Count 1, attempted murder, to 120 months in prison, with parole eligibility after 24
16 months, and an equal and consecutive prison term for the use of a deadly weapon; on Count 2,
17 battery, to 60 months, with parole eligibility after 24 months, to run concurrent with Count 1; on
18 Count 3, discharge of the weapon into a vehicle, to 48 months, with parole eligibility after 12
19 months, to run concurrent with Counts 1 and 2; and on Count 4, carrying a concealed firearm, to
20 48 months, with parole eligibility after 12 months, to run consecutive to Counts 1, 2 and 3. *See id.*

21 Owens appealed, and the Supreme Court of Nevada affirmed on April 15, 2015. *See*
22 Order of Affirmance, Exh. 58 (ECF No. 12-18).
23

1 Owens filed a post-conviction petition for writ of habeas corpus in the state district court
2 on September 1, 2015. *See* Petition for Writ of Habeas Corpus, Exh. 60 (ECF No. 12-20). After
3 an evidentiary hearing, the state district court denied the petition in a written order filed on April
4 20, 2017. *See* Transcripts of Evidentiary Hearing, Exhs. 71, 73 (ECF Nos. 12-31, 12-33);
5 Findings of Fact, Conclusions of Law and Order, Exh. 76 (ECF No. 12-36). Owens appealed,
6 and the Nevada Court of Appeals affirmed on February 12, 2019. *See* Order of Affirmance, Exh.
7 94 (ECF No. 13-14). This Court received Owens' *pro se* federal petition for writ of habeas
8 corpus on December 13, 2019. ECF No. 6.

9 The respondents move to dismiss, arguing that Grounds 1, 2, and 3 of Owens' petition are
10 conclusory and do not state facts sufficient to support claims of ineffective assistance of trial
11 counsel, and that Ground 5, a cumulative error claim, does not state a viable claim. ECF No. 10.
12 Owens did not respond to the motion to dismiss.

13 The respondents' arguments in their motion to dismiss go to the merits of Owens' claims.
14 They will be better addressed after the respondents file an answer and Owens has an opportunity
15 to reply to the answer. I therefore deny the motion to dismiss without prejudice to asserting the
16 same arguments in the answer.

17 I THEREFORE ORDER that the respondents' Motion to Dismiss (ECF No. 10) is
18 denied.

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1 I FURTHER ORDER that the respondents will have until March 1, 2021 to file an
2 answer. In all other respects the schedule for further proceedings set forth in the order entered
3 January 27, 2020 (ECF No. 5) will remain in effect. Under that order, Owens will have 60 days
4 to file a reply to the answer.

5 Dated: November 30, 2020.



6 ANDREW P. GORDON
7 UNITED STATES DISTRICT JUDGE
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